



Steven J. Moser

Tel: 631-824-0200

steven.moser@moserlawfirm.com

---

July 20, 2021

**VIA ECF**

The Honorable A. Kathleen Tomlinson  
United States Magistrate Judge  
United States District Court  
Eastern District of New York  
100 Federal Plaza  
Central Islip, NY 117222

Re: *Caccavale v. Hewlett-Packard Company a/k/a HP Inc., et al.*  
2:20-cv-00974-GRB-AKT (E.D.N.Y.)

Dear Judge Tomlinson:

This firm represents Plaintiffs Tony Caccavale (“Caccavale”), Anthony Mangelli (“Mangelli”), Douglas Sorbie (“Sorbie”), and James Billups (“Billups”)(collectively “Plaintiffs”) in the above referenced class and collective action. By this letter, Plaintiffs request an extension of the time to contact the Court regarding their intention to amend the complaint.

At a March 5, 2021 status conference the Court, *inter alia*, set a deadline of May 26, 2021 for Plaintiffs’ counsel to contact chambers to set up a phone conference should amendment of the complaint be necessary upon completion of paper discovery. (See ECF No. 75). On May 18, 2021, the Court granted the parties’ request to extend said date “in light of discovery from May 26, 2021 to July 2, 2021.” (See Docket Order Dated May 18, 2021; ECF No. 82). On June 11, 2021, the Court again granted the parties’ joint request to extend said date “in light of discovery from July 2, 2021 until July 23, 2021.” (See Docket order Dated June 11, 2021).

Plaintiffs timely served interrogatories and requests for production of documents on the Defendants on March 19, 2021. As of today, despite numerous meet and confers with opposing counsel that were detailed in our letter to the Court dated July 14, 2021 (ECF No. 91), all of the items of discovery raised Plaintiffs’ motions to compel dated July 9, 2021 (ECF Nos. 87 & 88) remain outstanding.

On July 13, 2021 the Court implicitly extended the deadline to file motions to compel discovery and directed the parties to further meet and confer prior to filing any discovery motions. (See ECF No. 90). The Plaintiffs have arranged for further meet and confers with the Defendants, who have indicated that they are available on July 23, 2021 and July 26, 2021, respectively.

On July 12, 2021 notice was mailed to 172 putative FLSA Collective Class members, and several have filed consent to join forms. The opt-in period closes on September 10, 2021.

Given that (1) the reason for twice extending the date to contact the Court regarding amendment was to complete discovery, (2) significant discovery from the Defendants remains outstanding, (3) further meet and confers have been scheduled as per the Court's instructions, (4) the FLSA opt-in period has not yet closed, and it is unclear whether the deadline to contact the Court regarding "amendment" also applies to adding new parties under Rule 21, and (5) Defendants will not be prejudiced thereby, Plaintiffs requested Defendants' consent to a 30 day extension of the deadline. On July 19, 2021, despite the fact that the Court implicitly extended the deadline for completion of paper discovery in its July 13, 2021 order, all Defendants advised that they could not consent to an extension of the time to contact chambers regarding amendment because the Court's June 11, 2021 docket order indicated that "the Court does not intend to further extend these dates."

Defendants are aware of the heightened standard that will be applied by the Court should a motion to amend be made after the deadline to contact the Court. "[T]he Rule 16(b) 'good cause' standard, rather than the more liberal standard of Rule 15(a), governs a motion to amend filed after the deadline a district court has set for amending the pleadings." *Parker v. Columbia Pictures Indus.*, 204 F.3d 326, 340 (2d Cir. 2000). If the deadline to contact the Court regarding amendment is not extended, and amendment turns out to be necessary, Defendants will have benefitted from their delay in producing the information necessary to amend. Therefore, we ask that the time to contact chambers regarding any anticipated amendment be extended until 20 days after the close of the opt-in period (September 30, 2021), or until the outstanding paper discovery issues are resolved, whichever is later.

Respectfully submitted,

/s/ Steven J. Moser  
Steven J. Moser

cc: All Counsel of Record (VIA ECF)